

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 CARL D. EDWARDS,

4 Plaintiff

Case No. 3:17-cv-00147-RCJ-CLB

ORDER

5 v.

6 MESHELL LEAVITT et al.,

7 Defendants
8

9 This action began with a *pro se* civil rights complaint filed pursuant to 42 U.S.C. §
10 1983 by a state prisoner. On December 20, 2019, the Court issued an order dismissing
11 the amended complaint with leave to amend and directed Plaintiff to file a second
12 amended complaint within thirty days. (ECF No. 11 at 6). The thirty-day period has now
13 expired, and Plaintiff has not filed a second amended complaint.

14 District courts have the inherent power to control their dockets and “[i]n the
15 exercise of that power, they may impose sanctions including, where appropriate . . .
16 dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831
17 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure
18 to prosecute an action, failure to obey a court order, or failure to comply with local rules.
19 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for
20 noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.
21 1992) (affirming dismissal for failure to comply with an order requiring amendment of
22 complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal
23 for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of
24 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming
25 dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
26 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with
27 local rules).

28 In determining whether to dismiss an action for lack of prosecution, failure to obey

1 a court order, or failure to comply with local rules, the court must consider several factors:
2 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
3 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
4 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
5 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
6 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

7 Here, the Court finds that the first two factors, the public's interest in expeditiously
8 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
9 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
10 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
11 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*
12 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
13 disposition of cases on their merits—is greatly outweighed by the factors in favor of
14 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
15 the court's order will result in dismissal satisfies the "consideration of alternatives"
16 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
17 F.2d at 1424. The Court's order requiring Plaintiff to file a second amended complaint
18 within thirty days expressly stated: "It is further ordered that, if Plaintiff fails to file a second
19 amended complaint curing the deficiencies outlined in this order, this action will be
20 dismissed with prejudice for failure to state a claim." (ECF No. 11 at 6). Thus, Plaintiff
21 had adequate warning that dismissal would result from his noncompliance with the
22 Court's order to file a second amended complaint within thirty days.

23 It is therefore ordered that this action is dismissed with prejudice based on
24 Plaintiff's failure to file a second amended complaint in compliance with this Court's
25 December 20, 2019, order and for failure to state a claim.

26 It is further ordered that the motion to proceed *in forma pauperis* (ECF No. 1) is
27 denied as moot.

28 It is further ordered that the motion for evidentiary hearing (ECF No. 10) is denied

1 as moot.


2 It is further ordered that the Clerk of Court shall close the case and enter judgment
3 accordingly.

4

5 DATED THIS 6th day of February, 2020.

6

7


UNITED STATES DISTRICT JUDGE

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28